

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO: 4:07-CR-00045-BR

UNITED STATES OF AMERICA

v.

JOHN ANTHONY PETERSON

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ORDER

This matter is before the court on defendant's *pro se* motion to dismiss his indictment and void the judgment pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure and Rule 60(b) of the Federal Rules of Civil Procedure. (DE # 117.)

By way of background, in 2008, after a jury convicted him of multiple controlled substances and firearms offenses, the court sentenced defendant to a total term of 420 months imprisonment. Defendant appealed, and the Fourth Circuit Court of Appeals vacated defendant's sentence and remanded the case for resentencing. United States v. Peterson, 629 F.3d 432 (4th Cir. 2011). On 3 October 2011, on remand, the court sentenced defendant to a total term of 195 months imprisonment. Defendant did not appeal from the amended judgment.

With the instant motion, like he has done in the past, (see DE ## 101-105), defendant is seeking relief by attacking the credibility of detective Rose Edmonds who testified against defendant in his jury trial. Defendant contends that Edmonds testified falsely in support of a search warrant pertaining to defendant and falsely testified before the grand jury. (Mem., DE # 117-1, at 4-5.) Defendant requests that he be released from incarceration. (Id. at 12.)

The court concludes that because defendant is attacking his convictions and sentence, his motion must be considered under 28 U.S.C. § 2255. See In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997) ("Those convicted in federal court are required to bring collateral attacks challenging the

validity of their judgment and sentence by filing a motion to vacate sentence pursuant to 28 U.S.C.A. § 2255.” (citations omitted)). However, any such motion must be filed on the appropriate form. See R. 2(c) Gov. Section 2255 Pro.; Local Civil Rule 81.2. Defendant’s motion is DENIED WITHOUT PREJUDICE to defendant filing the motion on form AO 243. The Clerk is DIRECTED to send to defendant, along with a copy of this order, form AO 243 with instructions.

This 12 June 2015.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge